

MINUTES OF JANUARY 4, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 4, 2021, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Acting Chair John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. John Williamson. Mr. Brent Workman - Absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Sharp – Director of Planning and Zoning, Mr. Jamie Whitehouse – Director of Planning and Zoning, Ms. Jennifer Norwood - Planning and Zoning Manager, Mr. Chase Phillips – Planner I, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Ms. Norwood noted that the staff proposes to amend the agenda to allow Board Member Ellen Magee to make a statement.

Motion by Dr. Carson, seconded by Mr. Chorman, and carried unanimously to approve the agenda as amended. Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Ms. Magee stated that she accepted the position as Register of Wills and submitted her resignation as Chair of the Board of Adjustment effective immediately; that it was a privilege to serve with such talented and selfless group of men and women; that it has been a rewarding experience; that the knowledge gained while serving on the Board will assist her throughout the rest of her career and lifetime; that she is proud of Sussex County; and that she will miss working with the Board.

Mr. Williamson thanked Ms. Magee for her years of service on behalf of the Board Members, Staff, and Mr. Sharp and that they wish her the best in her appointment as Register of Wills for Sussex County.

Mr. Chorman thanked Ms. Magee for helping him when he came on the Board and for her friendship.

Dr. Carson thanked Ms. Magee for her leadership and wished her well in her new position.

Ms. Norwood thanked Ms. Magee on behalf of herself, Mr. Whitehouse, and the Staff of Planning and Zoning for her service to the Board.

Mr. Sharp stated that Ms. Magee is Sussex County through and through and that will serve her well in her new position.

Motion by Dr. Carson, seconded by Mr. Chorman, and carried unanimously to approve the Minutes for the November 2, 2020, meeting. Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Motion by Mr. Chorman, seconded by Dr. Carson, and carried to approve the Findings of Facts for the November 2, 2020, meeting. Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

OLD BUSINESS

Case No. 12509 – Kevin & Patricia O'Reilly seek variances from the front yard and rear yard setback requirements for proposed and existing structures. (Sections 115-34, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Hassell Avenue Extension within the Bay View Park Subdivision. 911 Address: 34967 Hassell Avenue Ext., Bethany Beach. Zoning District: MR. Tax Parcel: 134-20.11-22.00

Mr. Phillips presented the application, which had been left open at the Board's meeting on December 21, 2020, for the limited purpose of allowing the Applicants to submit an original survey so that staff could calculate the actual variances needed. Mr. Phillips stated that the survey was submitted.

Mr. Phillips confirmed that no variance is needed for a deck in the rear yard and is not part of this application; and that the variances needed are 11 feet and 9 feet from the 30 foot front yard setback requirement.

The Board discussed the case.

Dr. Carson moved to approve Case No. 12509 for the variances as the property has unique physical conditions; that the variances will not alter the essential character of the neighborhood; and that they are the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea.

PUBLIC HEARINGS

Case No. 12510 – Keith A. Rust seeks a variance from the maximum fence height requirement for an existing fence (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of the W. Piney Grove Road, approximately 0.31 mile west of Parker Road. 911 Address: 19553 W. Piney Grove Road, Georgetown. Zoning District: AR-1. Tax Parcel: 133-5.00-6.01

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting a 2.5 ft. variance from the required 3.5 ft. maximum height for a fence. Mr. Phillips noted that the fence is 14 feet from the front property line and 26 feet of the fence along the side property line is not compliant with the Sussex County Zoning Code.

Mr. Keith Rust was sworn in to give testimony about the Application.

Mr. Rust testified that he contracted with a fence company to install a 6 ft. fence on his property; that the contractor did not get a permit to install the fence; that he was unaware that there was a height restriction for a fence; that he would have applied for the variance prior to the installation if he had been aware of the height restriction; that there are no complaints from neighbors about the fence; that the property is unique as it is surrounded on three sides by fields; that the fence helps with the winds that blow from the fields; that he has a particular problem with snow that blows onto his property; that the fence height requirement does not apply to agricultural lands; that his property is surrounded by agricultural lands; that a 3.5 ft. fence would not be sufficient for protection from winds and snow during the winter; that the snow has made it difficult to open his front door at times; that he is upset with his fencing company; that the fence was built in the spring of 2020; that debris from the fields also blows onto his property; that the exceptional practical difficulty was not created by the Applicant but by Breakwater Fence Company who failed to get a permit for installing the fence and they did not verify the regulations about the height of the fence; that granting the variance will not alter the essential character of the neighborhood; that there are no visibility issues with the fence as it is approximately 14 ft. from the edge of paving; that he still has full view of the road since the fence is set back from the road; that he has not received complaints from neighbors; that a 6 ft. fence is the minimum to provide relief from the 40 plus miles per hour winds and blowing snow; and that the property often receives strong easterly winds.

The Board found that no one appeared in support of or opposition to the Application.

Following the conclusion of Case No. 12510 Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12510 for the variance as the exceptional practical difficulty was not created by the Applicant and the variance will not alter the essential character of the neighborhood.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea

Case No. 12511 – Nussbaum Q.P.R. Trust c/o Andrew Nussbaum, Trustee seeks variances from the minimum lot width requirement and the minimum lot area requirement for proposed lots (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Holly Road within the North Shores Subdivision. 911 Address: 37 Holly Road, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-14.05-8.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting variances of 16,830 sf from the 32,670 sf minimum lot area, 24.2 ft from the 100-ft. lot width requirement for Lot 71 and variances of 16,981 sf from the 32,670 sf minimum lot area, 69.32 ft from the 100-ft. lot width requirement for Lot 72.

Mr. Andrew Nussbaum was sworn in to give testimony about the Application.

The Board found that Mr. Jim Fuqua, Esq. was present on behalf of the Applicant, Nussbaum Q.P.R Trust,

Mr. Fuqua stated that also present are Mr. and Mrs. Andrew Nussbaum and Mr. Bill Nussbaum; that this is an application request two lot width and two lot size variances; that practically speaking, this request seeks to adjust and reestablish the internal lot between the two existing lots on this parcel; that Mrs. Nussbaum owns both lots and wishes to give one lot each to her sons, Andy and Bill; that the lots were purchased in 1969; that the subdivision was recorded in 1956 prior to Sussex County Zoning Ordinances; that the vast majority of the lots in North Shores consist of less than 20,000 square feet and less than 100 ft. in width and these are the requirements for lots in an AR-1 district; that Lots 71 and 72 front on a cul-de-sac and the rear backs up to some common area that is adjacent to the North Shores Yacht Basin; that Mrs. Nussbaum built a home and a later addition on Lot 71 and a small portion of the home extends across the lot line to Lot 72; that, since Mrs. Nussbaum owned both lots, it was not an issue but by crossing the boundary line, the lots became merged into one parcel for tax mapping purposes; that Mrs. Nussbaum wants to convey a lot to each of her two sons; that, if the existing dwelling was demolished, the parcel could be then separated back to the two original lots; that, by preserving the house, variances are necessary from lot area and width requirements; that the North Shores HOA will also need to confirm that it has no objection to the subdivision of the property; that the North Shores HOA has developed a list of conditions and the Nussbaum family will comply with those conditions; that the two lots have always existed and the reestablishment of the two lots will be in character with the area; that, without the variance, the two lots cannot be reestablished unless the existing dwelling was demolished; that the exceptional

practical difficulty was not created by the Applicant as the property was established as two lots and the variances will return it to two lots with a slight variation that will allow the existing dwelling to remain in its current location; that a small triangular area of Lot 72 will now be part of Lot 71; that the front and rear corners of the lot will not change; that Lot 71 is 77.5 feet wide now but is proposed to be 80 feet wide; that Lot 72 is 45 feet wide but will be 40 feet wide as proposed; that the dwelling is functional and it would be wasteful to demolish it; that the variances are necessary to enable the reasonable use of the property; that it will not alter the essential character of the neighborhood as the two lots are similar to the original two lots and are consistent with other lots within the North Shores area and have conditional approval from the HOA; that no variances are required for the setback of the existing dwelling and are only slight changes from the original lot lines; that the Applicant would consent to a condition of approval that the HOA submits a letter of no objection; that neighbors support the request; and that the variances are the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue.

Mr. Andrew Nussbaum affirmed the statements made by Mr. Fuqua as true and correct.

Mr. Fuqua stated that the HOA has 12 items that need to be addressed and he is optimistic that the HOA will approve the request; that there are no issues with access to the site; that the HOA requires separate entrances for the lots; that there no flooding problems with the site; and that there will be no issues with constructing a home within the building envelope.

The Board found that no one appeared in support of or opposition to the Application.

Following the conclusion of Case No. 12511 Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12511 for the variances as the property is unique; that it cannot be developed without demolishing the existing dwelling; that it was originally two lots and granting the variances will reestablish two lots with slight variation of the lot line; that the variances will not alter the essential character of the neighborhood; that they are the minimum variances to afford relief; and that the proposed conditions be imposed as part of this approval.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variances be granted with conditions for the reasons stated.** Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea

Case 12512 – Kelly & Brian Ewing seek a variance from the side yard setback requirement for a proposed structure (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Mallard Drive within the Swann Keys Subdivision. 911 Address: 36918 Mallard Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-141.00

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received

one letter in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting a variance of 3.5 ft. from the required 5 ft. side yard setback on the south side for a proposed shed.

Ms. Kelly Ewing was sworn in to give testimony about the Application.

Ms. Ewing testified that she is requesting a variance to place a shed on her property; that she recently moved the property and she previously had a 2 car garage at her prior home; that the shed will measure 8 feet by 8 feet; that the lot is narrow with water access; that there is limited space on the side of the house where the shed is projected to go and it is the only area that does not have existing concrete, parking, yard, and landscaping; that there are utility/electrical boxes, vents, and AC/heating units that cannot be moved; that moving the shed to another area would cause safety issues by blocking windows; that the house and lot cannot be changed; that the side of the house where the proposed shed will be placed has the most space; that the placement of the shed in this location will allow the Applicants to have a shed without blocking windows and utilities or disturbing existing concrete, grass, and landscaping; that the shed cannot be placed in the rear of the property as there are flooding concerns; that street parking is not permitted on Mallard Drive so the shed needs to be placed in an area that will not prevent parking on the property; that the Applicants did not create the size and shape of the lot; that the shed is critical for storage as there is no garage on the property; that granting the variance would allow the Applicants to keep personal belongings on the property and not have the expense of an offsite storage unit; that the location of the shed will not alter the essential character of the neighborhood; that there are many sheds within the community and many are close to property lines; that the shed will match the color and shingling of the existing dwelling; that the shed will have vinyl siding to match the dwelling and that the trim will also match the house; that the neighbor who is closest to the proposed shed has no objection and submitted a letter in support of the Application; that the request is a minimum request to allow an 8 ft. by 8 ft. shed which is less than 600 square feet; that there is a stone at the base of the house which projects 5 inches; that the Applicants explored different options with different sized sheds but were unable to find a suitable option because of the location of the window, vent, and utilities; and that the Applicants did not want to block windows for safety reasons as so as not to block natural light.

Mr. Sharp noted that the small lot ordinance was approved in March 2018 and it led to a reduction of applications within Swann Keys.

Ms. Ewing testified that the owners of Lots 140, 142, and 68 support the request; that a portion of the rear yard is considered part of the lagoon; that the house is 2 stories tall but no cars can park underneath the home; that off-street parking is prohibited; that no HOA approval is needed; and that the entrance doors to the dwelling are on the north side of the property.

The Board found that no one appeared in support of or opposition to the Application.

Following the conclusion of Case No. 12512 Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12512 for the variance as it will not alter the essential character of the neighborhood and it is the minimum variance that will afford relief.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea

Case No. 12513 – Sheldon Berger seeks variances from the front yard setback, side yard setback requirements and maximum fence height requirement for proposed and existing structures. (Sections 115-42, 115-182 and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the northeast side of Oak Meadow Drive and the southwest side of Oak Orchard Road within the Oak Meadows Subdivision. 911 Address: 27772 Oak Meadow Drive, Millsboro. Zoning District: GR. Tax Parcel: 234-29.00-117.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and one mail return. The Applicant is requesting the following variances:

- 13.6 ft. from the required 40 ft. front yard from Oak Orchard Road for an existing shed.
- 22 ft. from the required 40 ft. front yard from Oak Orchard Road for a proposed pool.
- 16 ft. from the required 40 ft. front yard from Oak Orchard Road for a proposed deck.
- 20 ft. from the required 40 ft. front yard from Oak Orchard Road for proposed steps on a proposed deck.
- 2.5 ft. from the 3.5 ft. maximum height requirement for a fence in a front yard setback for a through lot.

Mr. Sheldon Berger was sworn in to give testimony about the Application.

Mr. Berger testified that he wishes to make some changes to his property; that he is not the original owner of this property; that his neighbors have a fence measuring 6 feet tall and he would like to extend that fence; that the rear of the property is adjacent to Route 5; that he chose a narrower pool to minimize the encroachments into the setback area; that a pool requires a 4 ft. fence to meet County Code; that there will be a deck around the pool; that the lot is unique as it is a through lot with two front yard setbacks; that the double setbacks make it exceptionally difficult to enclose the rear yard for a dog and pool; that the variances are necessary to enable the reasonable use of the property; that a 6 ft. fence across the rear of the property is necessary to cut down on the noise from the heavily traveled Oak Orchard Road (Rt. 5); that he has lived on the property for one year and he cannot enjoy the property without a fence due to the noise from Route 5; that the exceptional practical difficulty was created by the unique lot with two front yard setbacks; that granting the variances will not alter the essential character of the neighborhood as the neighbors at four homes on Oak Meadow have 6 ft.

fences and multiple adjacent properties have fences on the side yards higher than 3.5 ft.; that the setback for a pool on a regular lot is 10 ft; that his pool will be 18 ft. from the property line; that the proposed addition to the dwelling will meet the setbacks; that the deck be even with the first floor of the house; that he has received support from neighbors to the east and west of the lot; that the fence will also allow him to keep his dog on the property; that the variances are the minimum to afford relief; that the property suffers from noise problems; that the 6 ft. fence is needed to cut down on the noise from the road; that he did not place the shed on the lot; and that the steps on the Oak Meadow Drive are approximately 1 foot each.

Ms. Lepore noted that a neighboring property received variances in Case No. 10998 on July 2, 2012.

Mr. Berger testified that he is not the original owner of the house; that the prior owner bought the property in 1991 and built the house; and that he has made no improvements to the property since purchasing the lot.

During the Applicant's testimony additional variances would be required for existing structures. Mr. Sharp stated that the following would be needed: a 6.6 ft. and an 11.6 ft. variance for the porch and steps from the required 30 ft. front yard setback on Oak Meadow Drive, a 3.9 ft variance from the 10 ft. side yard for existing HVAC system and 0.5 ft. variance for a 16.2 ft length section of fence on the side of the property.

Mr. Berger testified that the property is served by public water and sewer; that the old septic was filled in with stone; that there is approximately 7 ft. between the property line and the edge of paving; that he has no vehicular access to Route 5; that the property is not located at an intersection; that granting the variance for the fence height will not cause any visibility issues for traffic; and that, when selecting a pool, that an oval shape was selected to make this a minimum variance request.

The Board found that one person appeared in support of and no one appeared in opposition to the Application.

Following the conclusion of Case No. 12512 Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12512 for the requested variances as it will not alter the essential character of the neighborhood and they are the minimum variances that will afford relief.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea

ADDITIONAL BUSINESS

The Board discussed the request for a 12-month extension for Case 12237 Lands of BB & Pops, LLC.

Mr. Sharp stated that the Applicant requested a two-year extension; that County Code only allows for a one-year extension; that the request before the Board is for a one-year or 12-month extension.

Motion by Dr. Carson, seconded by Mr. Chorman, to approve the extension for a period of one year. Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Meeting adjourned at 7:42 p.m.